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Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Trimble Navigation Limited

File: B-260316.3

Date: August 15, 1995

DECISION

Trimble Navigation Limited protests the rejection of its bid as nonresponsive and the award of a contract to Ashtech, Inc., under invitation for bids (IFB) No. DACW57-95-B-0022, issued by the Department of the Army, for differential global positioning system equipment. The agency rejected Trimble's bid as nonresponsive because, among other things, it failed to comply with the minimum bid acceptance period required by the IFB and to acknowledge any of the 5 amendments to the IFB.

We dismiss the protest.

The IFB contained the standard "Minimum Bid Acceptance Period" clause, as set forth at Federal Acquisition Regulation (FAR) § 52.214-16, which requires "a minimum acceptance period of 60 calendar days" and states that "[a] bid allowing less than the [g]overnment's minimum acceptance period will be rejected."

Trimble's bid specified a bid acceptance period of 30 days. The agency, upon review of Trimble's bid, determined it nonresponsive because the bid failed to provide for the minimum bid acceptance period of 60 days as required by the IFB. See Elevator Control Serv.; Elcon Enters., Inc., B-239360, June 6, 1990, 90-1 CPD ¶ 534 (bid which offers a bid acceptance period of lesser duration than that required by the IFB is nonresponsive and must be rejected).

Trimble argues that the IFB was ambiguous as to whether a minimum bid acceptance period of 60 days was required. In this regard, the protester refers to the note preceding item 12 on the Standard Form 33, "Solicitation, Offer and

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Award" cover page of the IFB, which states that "[i]tem 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period," and the text of item 12, which provides as follows:

"In compliance with the above, the undersigned agrees, if this offer is accepted with ____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date of receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s) within the time specified in the schedule."

Trimble concedes that the note read in conjunction with item 12 appears consistent with the minimum bid acceptance period clause included in the IFB that requires a 60-day minimum bid acceptance period. Trimble argues, however, that because, in its view, the term "deleted" was stamped across, in its view, both item 12 and the note preceding item 12,¹ it was "faced with two provisions that say the same thing, one of which ha[d] been deleted." Trimble asserts that it therefore "reasonably believed that the Army was not concerned about the minimum bid acceptance period and that the bidder was free to put in a lesser amount."

Under our Bid Protest Regulations, a protest concerning an alleged impropriety apparent from the face of the solicitation is required to be filed, either with the agency or our Office, prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1995). Where a protester is reasonably unaware of any interpretation other than its own, the firm cannot be charged with knowledge of an ambiguity that had to be protested before the closing date. Window Sys. Engr'g, B-222599, Aug. 27, 1986, 86-2 CPD ¶ 230.

Here, Trimble's protest is untimely because, by its account, it was aware of the alleged ambiguity in the solicitation prior to the bid opening date. In this regard, the protester, as quoted above, asserts that it reached its conclusion regarding the minimum bid acceptance period upon reviewing the IFB and considering "two provisions that say the same thing, one of which ha[d] been deleted." Where, as here, a protester believes that a solicitation is ambiguous, the protester must seek clarification of the allegedly ambiguity, and does not have the option of simply making assumptions regarding the meaning of certain provisions and then expecting relief when the agency does not act in the

¹In our view, the term "deleted" does not appear to be stamped across both the note and item 12 as asserted by Trimble, but rather was stamped across only item 12.

manner the protester assumed. See Inland Marine Indus., Inc., B-249914; B-249918, Dec. 24, 1992, 92-2 CPD ¶ 442.

Because we dismiss as untimely Trimble's protest that its failure to comply with the minimum bid acceptance period required by the IFB was due to an ambiguity in the solicitation, there is no basis on which to object to the agency's determination that Trimble's bid was nonresponsive for failing to comply with the IFB's minimum bid acceptance period.² See Elevator Control Serv.; Elcon Enters., Inc., supra.

The protest is dismissed.



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²Thus, we need not consider the propriety of the agency's determination that Trimble's bid was nonresponsive because it failed to acknowledge any of the 5 amendments to the IFB.